doctrine that courts can declare acts of the legislature void; a third shows the influence of theories of political philosophy upon the ante-bellum controversy regarding the nature of the Union; and the remaining two consider the significance of American political parties and their real function in popular government.

To the reviewer the two papers first mentioned seem to be contributions of great and permanent value to the discussion of their topic, and perhaps the most important since Professor Thayer's well-known essay upon the subject. The theory of social compact and the earnest desire to limit government by some power outside of itself, both inherited by the colonial Englishmen of the eighteenth century from their political forebears of the Rebellion in England, are convincingly shown to have been the really effective influences in launching and sustaining the doctrine that an unconstitutional act of the legislature may be disregarded by the courts. As becomes a sound lawyer, as well as a careful historian, Professor McLaughlin does not fail to point out what current discussions commonly ignore, that this is conceived as no duty peculiar to the courts but that it rests equally upon all other officers of government, or, for that matter, upon all individuals within the jurisdiction. They, as well as the judges, are under an obligation not to violate the constitution, though bidden to do so by the legislature, and, under the Anglo-American principle of the supremacy of law over even governmental action which infringes private rights, public officers are individually liable for the violation of any law applicable to their acts, including of course the supreme law, the Constitution. Thus was realized in some fashion the dream of those who sought to impose ordered limitations upon government itself, and chiefly through the medium of the courts because their judicial function compelled them to decide finally, as between individuals, controversies about the meaning of constitutions. Dreams change with the centuries, and if to-day the ideal of the right of society to act for the collective good begins to dim the older vision of the right of the individual to be protected from the tyranny of government, that is no good reason for misreading history.

Professor McLaughlin's book, tracing the ancestry of the political ideals of the Revolution, and Professor Beard's recent article, "The Supreme Court — Usurper or Grantee,"[1] investigating the individual views of the framers of the federal Constitution, have replaced plausible conjecture with tolerable certainty regarding two important phases of the question to which they relate.

The style of all of these essays is easy and delightful and their argument sane, thoughtful, and persuasive. The ones discussing political parties are marked by a quiet humor, and disclose glimpses of the author's political philosophy that tempt one to hope he may before long elaborate it further.

J. P. H.

HANDBOOK ON THE LAW OF JUDICIAL PRECEDENTS, OR THE SCIENCE OF CASE LAW. By Henry Campbell Black. St. Paul: West Publishing Company. 1912. pp. xv, 768.

This is a full and laborious treatment of a subject of considerable practical importance never before covered by a treatise. The work falls into four parts: (1) Decisions and *dicta;* (2) The doctrine *stare decisis* and the binding effect of precedents; (3) The modern doctrine of "law of the case"; (4) The effect of precedents in the state courts upon decisions in the federal courts.

The treatment of the last two parts is thorough and apparently well done. No other book can so well direct the investigator to the law on the novel and important questions discussed. The first half of the book cannot be so highly

[1] Political Science Quarterly (March, 1912).

praised. The discussion of decision and *dictum* hardly adds to the classic discussion by Professor Wambaugh. So far as one can see, the author comes to his material without prior first-hand knowledge of the problem. In the paragraph headed "Judicial decisions as law or evidence of law" he treats a question over which legal thinkers have been in dispute for generations as if a single reference to Austin and a sentence from Pollock were enough to dispose of the matter. In dealing with precedents in English law the author relies on Markby's somewhat crude opinion that the decisions of the earlier judges were used "as indicating the custom of England, and not as authority"; though Sir Frederick Pollock has long since vouched very early authority to prove the force of precedent in the fourteenth century. In dealing with precedents in the modern civil law he relies on a passage from Dillon, who is hardly a primary authority on the point. It is of course currently said that precedents are of no authority and never cited in court in countries governed by the civil law of Europe. But the reports of decisions in countries governed by the civil law during the last century are probably greater in number than those of England and America combined; and as to Mexico, which he says "has no regular reports or records of adjudged cases," one American library alone contains one hundred and sixty-eight volumes of such reports, and is far from complete. Spain, from which the Mexican law is derived, so far from giving no force to precedents, gives far more than we do; for every decision which stands at all receives an official sanction which gives it the force of statute.

These criticisms, however, are all directed at a comparatively unimportant part of the work. It may be said in general that the treatise covers an important portion of the law not hitherto covered by any treatise, and does it well.

J. H. B.

A SUMMARY OF THE LAW OF TORTS. By John W. Salmond. Being An Abridgment for the Use of Students of the Same Author's Treatise on the Law of Torts. London: Stevens and Haynes. 1912. pp. xxii, 320.

THE LAW OF TORTS. By John W. Salmond. Third Edition. London: Stevens and Haynes. 1912. pp. xxx, 548.

If a type of legal literature is to be developed for the relief of students seeking "to take an examination in a book without reading it," the reader's interest not less than the author's indicates the latter as the maker of his own abridgment. But American students with a less contracted aim will gain nothing by Mr. Salmond's "Summary," for neatly and skilfully as the work of compression is done it is all pure loss. The larger book is none too large. Indeed Mr. Salmond has adhered so strictly to his declared purpose of making it a "compendium of legal principles" that its statements sometimes tend to bareness, and the reader finds himself wishing for the fuller expression of views which he has good reason to know would be both valuable and interesting.

A new edition of the larger treatise, coming less than two years after the second, is added evidence of its deserved popularity. It has lately been made the accredited text-book in the subject for the LL.B. examination in Cambridge, and the esteem in which it is held on this side of the Atlantic is indicated by the award of the Ames Prize to Mr. Salmond in 1910.

In the third edition, as in the second, the changes from the earlier edition (noticed in 22 HARV. L. REV. 69) have not been great, but the work of revision has evidently been done with care, and there are some interesting additions. The author recants his former opinion that a corporation is not liable for a tort committed in an ultra vires undertaking and accepts the American cases sustaining the liability. The need of a broader treatment of Negligence still makes itself felt. On this subject Mr. Salmond's book does not mark an advance over Sir Frederick Pollock's.

E. R. T.